



OHMVR COMMISSION MEETING Upper Lake, CA 95485

February 28, 2014

STAFF REPORT: OHMVR Commission Committees

STAFF: Dan Canfield, Planning Manager

SUBJECT: OHMVR Commission Committees

Summary

There are two types of meetings held by the OHMVR commission. There is a board meeting, when a quorum of the members is present at a publicly-noticed meeting and there are committee meetings. There are two types of committees: standing committees and ad hoc committees.

A standing committee “performs a continuing function and remain[s] in existence permanently or the life of the assembly that establishes them.” Robert’s Rules of Order Newly Revised (RONR) (10th Ed.), Da Capo Press, 2000, page 47, 320-35. A standing committee is generally established by a resolution of the Commission.

A special or ad hoc committee is appointed to carry out a specified task, and at the cessation of that task, ceases to exist. An ad hoc committee cannot be assigned to carry out a task that is within the assignment of an existing standing committee.

Board and committee meetings are generally required to be noticed and open to the public, with the exception of a closed session. One other exception is a “special” or “ad hoc” committee, which has fewer than 3 members and does not exercise authority.

As part of conducting business, the OHMVR Commission through the chairperson has often formed Commission Committees to focus on a particular issue or task, and then report back to the full Commission. A listing of past and present OHMVR Commission Committees including Commissioner assignments as applicable is attached to this report (see Attachment 1).

The OHMVR Commission, through the chairperson, may want to take action to fill vacant committees, remove committees no longer needed, or establish new committees.

Discussion

The OHMVR Commission is established in Public Resources Code (PRC) Section 5090.15:

PRC 5090.15. (a) There is in the department the Off-Highway Motor Vehicle Recreation Commission, consisting of nine members...

The OHMVR Commission has 9 seats, with 7 seats currently filled. Thus, a quorum is 4 for a board meeting.

PRC Section 5090.19 directs the OHMVR Commission to annually elect a chairperson from the Commission membership. Pursuant to PRC Section 5090.22, that chairperson then has the authority to appoint committees composed of members of the OHMVR Commission and prescribe the jurisdiction of each committee.

California's general open meeting rule is found in Government Code (GC) Section 11120, Bagley-Keene Open Meeting Act, which states that "public agencies exist to aid in the conduct of the people's business and the proceedings of public agencies be conducted openly so that the public may remain informed. ... It is the intent of the law that the actions of state agencies be taken openly and that their deliberation be conducted openly." The courts liberally interpret Bagley Keene in favor of open meeting requirements while exceptions are strictly or narrowly construed. 73 Op.AttyGen.1,5 (Jan. 9, 1990), following *San Diego Union v. City Council* (1983) 146 Cal.App.3d 947, 954-55.

GC Section 11121(c) states that an "advisory committee" or "subcommittee" created by formal action and consisting of three or more persons is included in the definition of a "public body". The law does say "if created by formal action of the state body or any member of the state body", but formal action does not require formal adoption of a Commission resolution or similar action. Courts will find significantly less formal action so long as it can be found that the Board or chair acted. *Joiner v. City of Sebastopol* (1981) 125 Cal. App.3d 799, 805. Thus, a standing committee needs to be noticed.

Commissioners coming from local agencies that are governed by the Brown Act, not the Bagley Keene Act, may be used to a "less than a quorum" exception. (This exception provides that a meeting of a legislative body has not occurred when less than a quorum of a board or commission gathers, as the findings of a quorum have not yet deliberated the issue and there is still an opportunity to have a full public hearing remains.) However, the Bagley Keene Act limits the less-than-a-quorum exception to advisory committees by providing that advisory committees of three members or more are covered by open meeting provisions. The Act does not govern ad hoc committees of 2 members.

Committees are also state bodies because they are multi-member bodies that exercise authority delegated by the Board. "Exercise of authority" is broadly interpreted to include information-gathering, advice, recommendations and similar actions, in addition

to actual decision-making. *Frazer v. Dixon Unified School District* (1993) 18 Cal.App.4th 781, 793, n.15.

GC Section 11122.5 does contain some guidance as to when members of a state body or committee or subcommittee may attend other types of meetings, so long as they do not “use a series of communications of any kind, directly or through intermediaries, discuss, or deliberate on any item of business that is within the subject matter of the state body.” They are:

- (1) *Individual contacts or conversations between a member of a state body and any other person*
- (2) (A) *The attendance of a majority of the members of a state body at a conference or similar gathering open to the public that involves a discussion of issues of general interest to the public or to public agencies of the type represented by the state body, if a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specified nature that is within the subject matter jurisdiction of the state body.*
- (3) *The attendance of a majority of the members of a state body at an open and publicized meeting organized to address a topic of state concern by a person or organization other than the state body, if a majority of the members do not discuss among themselves, other than as part of the scheduled program, business of a specific nature that is within the subject matter jurisdiction of the state body.*
- (4) *The attendance of a majority of the members of a state body at an open and noticed meeting of another state body or of a legislative body of a local agency..., if a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the other state body.*
- (5) *The attendance of a majority of the members of a state body at a purely social or ceremonial occasion, if a majority of the members do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the state body.*
- (6) *The attendance of a majority of the members of a state body at an open and noticed meeting of a standing committee of that body, if the members of the state body who are not members of the standing committee attend only as observers.*

Consequences. Pursuant to GC Section 11130.7, It is a misdemeanor for a member of a legislative body of a local agency or a state body to knowingly attend a meeting where action is taken in violation of any provision of the open meeting laws, where the member intends to deprive the public of information to which it is entitled.

Mandamus, injunctive or declaratory relief is available to stop or prevent violations of the Bagley-Keene or Brown Acts. GC Section 11130.

Mandamus or injunctive relief is available to declare as null and void an action in violation of the Bagley-Keene Act, GC Sections 11123 (open meetings) and 11125 (notice of meetings).

Commission Action

The Commission may:

1. Take no action.
2. Work through the chairperson to recommend the deletion of Commission Committees no longer needed, establish new Commission Committees, appoint Commission Committee memberships, and prescribe Commission Committee jurisdictions.

Attachments

Attachment 1: OHMVR Commission Committee List

OHMVR Commission Ad Hoc Committees

| COMMITTEE | MEMBERSHIP |
|---|--|
| Commission Policies & Procedures | VACANT |
| Acquisition | VACANT |
| Private Property Interface | VACANT |
| Education | Commissioner Pérez |
| BLM Liaison | VACANT |
| USFS Liaison | Commissioner Cabral |
| Awards & Clubs Liaison | Commissioner Slavik |
| Commission 201(4) Report | Commissioner Slavik; Commissioner Pérez |
| Alternative Energy | VACANT |
| Einstein Bill | VACANT |
| Clear Creek Management Area | Commissioner Pérez; Commissioner Cabral |
| Red Sticker | VACANT |
| ATV Safety | VACANT |
| Cost Recovery | Commissioner Slavik; Commissioner Villegas |
| Events | Commissioner Kerr |
| 150 th Anniversary | Commissioner Slavik |
| Statewide Motorized Trail | Commissioner Murphy; Commissioner Cabral |
| Recreational Trails Program | Commissioner Villegas; Commissioner Cabral |
| Eldorado National Forest 42 Routes SEIS Draft Letter | Commissioner Slavik; Commissioner Cabral |
| Special OHV License Plate | Commissioner Kerr; Commissioner Slavik |
| Off-Highway PAL Program | Commissioner Villegas; Commissioner Slavik |